

FEB 17 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VENG YOU TANG,

Petitioner - Appellant,

v.

CAL A. TERHUNE, Director of CDC,

Respondent - Appellee.

No. 05-15523

D.C. No. CV-00-02388-DFL/JFM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
David F. Levi, District Judge, Presiding

Submitted on briefs February 13, 2006^{**}
San Francisco, California

Before: REINHARDT, PAEZ, and TALLMAN, Circuit Judges.

Appellant Veng You Tang appeals the district court's denial of his petition
for habeas corpus. We affirm.

^{*} This disposition is not appropriate for publication and may not be cited
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

The appellant argues that the admission of evidence of his involvement in a prior uncharged robbery violated his due process rights. We see no error in the admission of the evidence, but even if there were, we cannot say that “the admission of the evidence was arbitrary or so prejudicial that it rendered the trial fundamentally unfair,” *Walters v. Maass*, 45 F.3d 1355, 1357 (9th Cir. 1995); thus, there was no due process violation. The evidence of the prior uncharged robbery was not central to the state’s case against the appellant. The state relied principally upon the eyewitness identifications made by the robbery victim and his assistant, as well as the testimony of the appellant’s accomplices. *See United States v. Labansat*, 94 F.3d 527, 531 (9th Cir. 1996). Indeed, wholly aside from the prior bad act testimony, the evidence against appellant was overwhelming. Finally, the trial court’s jury instructions, explaining the limited purpose for which the prior bad act evidence could be considered, mitigated any potential prejudice entailed in its introduction. *See Walters*, 45 F.3d at 1357-58.

AFFIRMED.